

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

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DOVID TYRNAUER, AMANDA BERGER,)
DAVID CALLAWAY, CHRIS HALVERSON,)
TIFFANY TAYLOR, and SARAH TICKLE,)
individually and on behalf of all others)
similarly situated,)
Plaintiffs,)
v.)
BEN & JERRY'S HOMEMADE, INC.,)
Defendant.)

Case No. 2:23-cv-00299

ORDER DISMISSING CASE

A review of the docket in this case reveals the following:

1. On July 8, 2024, the court issued an Opinion and Order granting Defendant Ben & Jerry's Homemade Inc.'s motion to dismiss the Amended Complaint filed by Plaintiffs Dovid Tyrnauer, Amanda Berger, David Callaway, Chris Halverson, Tiffany Taylor, and Sarah Tickle (collectively, "Plaintiffs").
2. The court granted Plaintiffs leave to file a Second Amended Complaint within twenty (20) days of the July 8, 2024 Opinion and Order.
3. No further filings have been received as of the date of this Order.

Fed. R. Civ. P. 41(b) authorizes dismissal of an action when "the plaintiff fails to prosecute or comply with these rules or a court order[.]" Where a defendant has not moved under Rule 41(b), a court may nevertheless dismiss a case *sua sponte*. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962).

Although Rule 41(b) does not define "[f]ailure to prosecute[.]" the Second Circuit has held that "[i]t can evidence itself either in an action lying dormant with no significant activity to move it[.]" *Lyell Theatre Corp. v. Loews Corp.*, 682 F.2d 37, 42 (2d Cir. 1982).

Because Plaintiffs failed to file a Second Amended Complaint in the time allowed, and pursuant to Federal Rule of Civil Procedure Rule 41(b), Plaintiffs' case is hereby DISMISSED.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 27th day of August, 2024.



Christina Reiss, Chief Judge
United States District Court